

RAINBOW RESOURCES, INC.

IBLA 74-142 1/  
IBLA 74-223

Decided September 12, 1974

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, requiring that special stipulations be executed as a condition precedent to the issuance of oil and gas leases under W-38923, W-38925 through W-38937, W-38939, and W-38943.

Set aside in part and remanded.

1. Oil and Gas Leases: Generally--Oil and Gas Leases: Applications:  
Generally--Oil and Gas Lease Consent of Agency--Oil and Gas  
Leases: Stipulations

Where the Forest Service suggests a stipulation barring any occupancy and use of the surface as a condition precedent to the issuance of an oil and gas lease for public lands in a national forest, based only on the fact that the land is in an "inventoried roadless area," and where, subsequent to an appeal objecting to that stipulation, the Forest Service submits a revised stipulation, the Bureau of Land Management decision to the extent it required the execution and filing of the "Roadless Area" stipulation will be set aside and the case remanded to the Bureau for submission of the substitute stipulation to the offeror for execution and filing.

APPEARANCES: Morris R. Massey, Esq., of Brown, Drew, Apostolos, Barton & Massey, Casper, Wyoming, for appellant; Dean A. Gardner, Esq., Office of the General Counsel, United States Department of Agriculture, Ogden, Utah, for the Forest Service.

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1/ Since the parties and issues involved in these cases are identical, they have been consolidated in the Board of Land Appeals for decision.

## OPINION BY ADMINISTRATIVE JUDGE LEWIS

Rainbow Resources, Inc. has appealed from so much of the separate decisions of the Wyoming State Office, Bureau of Land Management (BLM), dated October 25, 1973, and February 5, 1974, as required it to accept in each instance "Stipulation for Roadless Areas" applicable to all or part of the land described in its noncompetitive oil and gas lease offers W-38923, W-38925 through W-38937, W-38939, and W-38943, as a condition precedent to the issuance of each of sixteen leases under section 17, Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1970).

The decisions appealed from required the offeror to execute and file two special stipulations. The stipulation entitled "Stipulation for Roadless Areas" is the one which appellant finds objectionable on the ground it is tantamount to a prohibition of any occupancy of the land and an environmental statement may not be forthcoming for years.

Appellant's oil and gas lease offers are for public lands in a national forest, the surface management of which is under the jurisdiction of the Department of Agriculture.

The Forest Service office at Ogden, Utah, in letters dated October 2, 1973, and January 3, 1974, addressed to the Wyoming State Office, BLM, advised that it had no objection to the issuance of leases for certain tracts of lands described in the subject offers, provided that stipulations were executed, including the enclosed "Stipulation for Roadless Areas" it had formulated. That special stipulation reads:

Lands embraced in this lease or permit have been inventoried as roadless and must be evaluated for their wilderness potential, therefore, the lessee or permittee agrees not to occupy the surface of the following tract within the lease or permit area in a manner that will alter the wilderness character of the land, until an Environmental Statement is prepared and the propriety of surface occupancy is determined.  
(Legal description of tract)

A brief on behalf of the Forest Service, responding to appellant's statement of reasons for appeal, was filed. It contains a revised stipulation which provides:

It is mutually understood that some of the lands embraced in this lease have been inventoried as roadless areas and must be evaluated for their wilderness potential. Depending on the results of the evaluation, the areas in question may be determined as suitable for further wilderness study, or not suitable for wilderness. Those areas determined as suitable for wilderness may ultimately be classified as wilderness.

In the inventoried roadless areas, the following restrictions shall apply:

A. Existing roads, if any, may be used for temporary access in a non-destructive manner, but may not be reconstructed, improved or graded.

B. Where temporary access is needed to an area not served by an existing road, methods of access not resulting in erosion, scars or environmental damage shall be used.

C. Where long term access or development is desired, or where the method to be used will possibly cause environmental damage, an application for such access or development shall be filed with the Supervisor of the National Forest involved. Such application shall include the nature of the proposed access or development, any measures proposed to minimize the environmental impact, including proposed restoration measures, and a map of the location and the access or development. The Supervisor will coordinate the proposal with the local office of the United States Geological Survey, and based upon such coordination and agreement reached with the United States Geological Survey, will either approve the proposal, conditioned upon necessary protective measures, or will disapprove the proposal.

D. This clause shall become inoperative in the event the area is determined as not suitable for wilderness.

E. If the area, or part of it, is determined as suitable for wilderness study, this clause shall remain in full force and effect until the area is

either classified for wilderness or is formally rejected for such classification. If the area is classified as wilderness, this lease shall become subject to the provisions of the Act of September 3, 1964, 78 Stat. 893, and the Forest Service regulations and policies pertaining thereto.

[1] Without ruling upon the acceptability of the original stipulation, we note that the substitute stipulation permits occupancy and use of the land involved under controlled conditions. While we feel the substitute stipulation appears to be reasonable and acceptable, nevertheless, we withhold final judgement thereon in the absence of its having been submitted to appellant by the Bureau of Land Management for execution and filing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Wyoming State Office, BLM, relating to the subject offers, to the extent that they required the execution of the "Stipulation for Roadless Areas," are set aside and the case files are remanded to the Wyoming State Office for the purpose of furnishing Rainbow Resources, Inc. with copies of the new stipulation formulated by the Forest Service and to allow 30 days from its receipt within which to execute and file the new stipulation.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Martin Ritvo  
Administrative Judge

